IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2945 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

DIVISIONAL CONTROLLER

Versus

SECRETARY

Appearance:

1. Special Civil Application No. 2945 of 2000

MR KM PARIKH for Petitioner No. 1

MS PARAGI K PARIKH for Petitioner No. 1

MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/09/2001

ORAL JUDGEMENT

#. Rule. Mr.Rathod waives service of rule for the respondent. With the consent of the parties, the matter is taken up for final hearing today.

#. The concerned workman was dismissed from service since he remained absent without leave for about 3 and 1/2 months. For that misconduct, he was removed by the disciplinary authority. That order was challenged by the concerned workman before the appellate authority of the Corporation. The appellate authority reduced that punishment and instead of removing the concerned workman from service, he was put to the minimum pay scale. Being aggrieved by the said decision, the respondent workman raised the industrial dispute which was numbered as Reference (I.T.N.) New No.402 of 1998. The Industrial Tribunal came to the conclusion that the punishment was on excessive side. It was found that the concerned workman was sick during the intervening period, not only that, but he was hospitalised. Considering the facts and circumstances of the case, the penalty of placing the respondent workman in the minimum pay scale was modified by the Industrial Tribunal while exercising the powers under section 11-A of the Industrial Disputes Act and he was subjected to withholding of two increments with future effect.

#. Mr.Parikh also argued that the Industrial Tribunal has also granted the back-wages for the period during which the respondent workman was not in service i.e. from the date of the order of dismissal of the first authority till the appellate authority passed the order of reinstatement. The said intervening period is roughly from 25.9.1990 to 6.7.1992.

#. In my view, the aforesaid order of the Industrial Tribunal cannot be said to be unjust or illegal in any way.

#. In the facts and circumstances of the case, however, instead of granting full back-wages for the intervening period i.e. 25.9.1990 to 6.7.1992 the respondent workman should be satisfied with only 50% back-wages. The award of the Industrial Tribunal is modified only to the aforesaid extent. The rest of the award of the Industrial Tribunal is confirmed. The Corporation may pay, whatever, the difference of amount is required to be paid to the concerned workman, within a period of three months from today.

#. The petition is partly allowed. Rule is made absolute to the aforesaid extent.

(P.B.Majmudar,J)
(pathan)